

**REMARKS/ARGUMENTS**

This case has been carefully reviewed and analyzed in view of the Official Action dated 9 July 2004. Responsive to the objections and rejections made in the Official Action, Claims 1-3 and 5-11 have been amended to clarify the language thereof and the combination of elements which form the invention of the subject Patent Application. Additionally, Claim 4 has been canceled by this Amendment.

In the Official Action, the Examiner objected to Claim 11 under 37 C.F.R. § 1.75(c), as being in improper dependent form. In particular, the Examiner noted that Claim 11 depended from itself, and therefore, had no parent Claim to further limit.

Claim 11 has been amended to depend from Claim 1, and thus is now in proper dependent form.

In the Official Action, the Examiner rejected Claims 1-6 and 9-10 under 35 U.S.C. § 102(e), as being anticipated by Gitzinger, et al. U.S. Patent #6,633,770. Claim 11 was rejected under 35 U.S.C. § 103(a), as being unpatentable over Gitzinger, et al. in view of Official Notice taken by the Examiner. However, the Examiner kindly indicated that Claims 7 and 8 would be allowable if rewritten in Independent form including all of the limitations of the base Claim and any intervening Claims.

It is respectfully submitted that Claim 1 has been amended to incorporate limitations from Claim 7 that provide patentable distinction over the Gitzinger, et al. reference. In particular, Claim 1 now calls for the microphone being disposed inside the

microphone support and adhered to an inner wall thereof to define a clearance between the microphone and a portion of the microphone support, the microphone support having a hole extending from an opening in an outer wall thereof and being in open communication with the clearance, and further includes a sealing member displaceably disposed in the hole of the microphone support; and, a switch located external to the microphone support and coupled to the sealing member for reversibly displacing the sealing member to block and unblock communication between the clearance and the opening in the outer wall of the microphone support. That structure is neither disclosed nor suggested in the Gitzinger, et al. reference.

In Gitzinger, et al., the telecommunication device holster having a retractable earpiece assembly integrated therewith is disclosed. The cord 56 has an earbud 53 disposed at a distal end thereof and a microphone 54 disposed on the cord at a location displaced from the earbud 53. Nowhere does the reference disclose or suggest the microphone having a clearance adjacent thereto in open communication with a hole having an opening in an outer wall surface of a microphone support. Further, the reference fails to disclose or suggest a sealing member displaceably disposed in the hole and a switch located external to the microphone support and coupled to the sealing member for displacing the sealing member to block and unblock communication between the clearance and the opening in an outer wall of the microphone support.

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Therefore, as the reference fails to disclose each and every one of the elements of the invention of the subject Patent Application, it cannot anticipate that invention. Further, as the reference fails to suggest such a combination of elements, it cannot make obvious that invention either. Claims 2, 3, and 5-11 are dependent on Claim 1, and therefore, patentably distinct for at least the same reasons.

It is now believed that the subject Patent Application has been placed in condition for allowance, and such action is respectfully requested.

Respectfully submitted,

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